IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 10212 of 1998

For Approval and Signature:

HON'BLE MR JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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G S R T C - Petitioner(s)

Versus

NARANBHAI KARSANBHAI KHAMBHALA - Respondent(s)

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Appearance :

MRS VASAVDATTA BHATT for Petitioner No(s).: 1.

MR MUKESH H RATHOD for Respondent No(s).: 1.

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CORAM :HON'BLE MR JUSTICE KS JHAVERI

Date : 12/07/2005

ORAL JUDGMENT

1. This petition is directed against the judgment and award dated 16th April, 1998 passed by the Labour Court, Vadodara in Reference No. 1156 of 1998, whereby the Labour

Court has directed the petitioner Corporation to reinstate the respondent workman on his original post with continuity in service along with all consequential benefits and 50% back wages.

2. The short facts of the case are that the respondent workman was working as a Conductor with the petitioner Corporation. The respondent workman was issued show cause notice on the ground of unauthorized absenteeism. Thereafter departmental inquiry was held against the respondent workman whereby also the respondent workman did not remain present. Hence ex-parte inquiry was held and on completion of the inquiry, the allegations levelled against the respondent workman were proved and he was dismissed from the service w.e.f.30th November, 1994.

2.1. Feeling aggrieved by the said order, the respondent workman raised an industrial dispute which was ultimately referred to the Labour Court, Vadodara for adjudication. The Labour Court after appreciating the materials produced before it, passed the impugned award. Hence, this petition.

3. Mrs. Bhatt learned advocate for the petitioner Corporation has contended that the Labour Court has while exercising powers under Section 11A of the Industrial Disputes Act, has granted reinstatement with continuity in service along with 50% back wages and has not imposed any penalty. She has further submitted that the Labour Court has erred in not appreciating the past record of the

respondent workman whereby the respondent workman has committed defaults in 39 cases.

4. I have heard the learned counsel for the parties and have perused the material placed on record. While exercising the powers under Section 11A of the Industrial Disputes Act, 1947, the Labour Court has not imposed any penalty, while substituting the order of dismissal passed by the petitioner Corporation. In my opinion, the Labour Court ought to have imposed some penalty while granting the respondent reinstatement with continuity in service.

4.1. Moreover, the Labour Court has not given cogent reasons for awarding 50% back wages to the respondent workman. Keeping in mind the principle laid down by the Apex Court that a workman shall be entitled for back wages if he has worked for the interim period, the respondent herein cannot be said to be entitled for back wages. In that view of the matter, the impugned order of the Labour Court as regards grant of back wages is required to be quashed and set aside.

5. For the foregoing reasons, the petition is partly allowed. The award dated 16th April, 1998 passed by the Labour Court, Vadodara in Reference No. 1156 of 1998, qua the direction with regard to grant of back wages is quashed and set aside and rest of the award is confirmed. The respondent workman shall be entitled for the salary from the date of the publication of the award till he is reinstated in service and the payment accruing thereto

shall be made within a period of three months from the date of receipt of writ of this order. Rule is made absolute to the aforesaid extent with no order as to costs.

[K.S. JHAVERI, J.]

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